

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6528
PETITION OF ANNE STUKES**

**OPINION OF THE BOARD
(Opinion Adopted July 26, 2017)
(Effective Date of Opinion: August 8, 2017)**

Case No. A-6528 is an application for a variance needed to allow construction of a proposed one-story frame addition. The proposed structure requires a variance of two (2) feet as it is within five (5) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B of the Montgomery County Zoning Ordinance.

The Board held a hearing on the application on July 26, 2017. Petitioner Anne W. Stukes appeared at the hearing with Joseph J. Doane, her engineer, and with Susan Matus of CASE Design.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 23, Sec. 2, Meadowbrook Subdivision, located at 7612 Lynn Drive, Chevy Chase, Maryland, 20815, in the R-60 Zone.
2. The subject property is 5,400 square feet, less than the 6,000 square foot minimum for the R-60 zone. The property contains a three-bedroom, two-bath single family house constructed in 1939. The Petitioner purchased this property in 2009. See Exhibit 3.
3. In 2010, in variance Case No. A-6321, which also pertained to the subject property, the Board made the following findings:

The Board finds that the subject property's topography slopes upward from the street and that the lot's topography continues an upward slope into the rear yard. The Board finds that there is a 30-40 foot grade change from the lot's rear yard to the front of the properties on East-West Highway [Lots 3, 4, 5] that abut the lot's rear yard. The Board finds that the subject property receives a substantial amount

of water runoff from the abutting lots. The Board finds that these are exceptional circumstances peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

The Petitioner's Statement indicates that the severe slope of this property continues to cause problems despite her best efforts to address them. She characterizes the evidence from the 2010 hearing as follows:

Evidence at the 2010 variance hearing established that the property is subject to extensive ground and surface water flow because it is down-slope from the rear-adjacent property, which has a paved back yard, and downslope from East-West Highway, a four-lane roadway which is directly uphill from the property. [citation omitted] Water from these areas flows onto the subject property, and the water flow is exacerbated by the amount of pavement that is uphill from the property.

See Exhibit 3. The Statement indicates that construction of an addition to the rear of this home is "infeasible due to the lot's topography and small size."

4. The Petitioner proposes the construction of a one-story frame addition above an existing single-car garage that was built pursuant to Board of Appeals' Case No. A-6321, in which the Board granted a variance from the side lot line setback to allow the reconstruction of this garage. Per the Petitioner's Statement, while the existing garage will form the foundation for the proposed addition, the addition will not cover the entire footprint of the garage. Instead, the proposed addition will be further from the property line than the garage "to keep the variance to the minimum reasonably necessary to overcome the exceptional property conditions." The Petitioner's Statement goes on to explain that the grant of the requested variance will allow for the location of the addition over a portion of the garage which can withstand the load from the addition, noting that if the addition were to be set back the required seven feet from the side lot line, the bearing wall of the addition would be over that part of the garage (door opening) least able to withstand the load:

Petitioner is not asking to build 3.5 feet from the property line, which would span the full width of the garage, and would be the ideal structural configuration to allow the addition to bear directly over the side wall of the garage. See Exhibit D at p. 3 ("While the most structurally-effective method of framing this addition would be to utilize the existing masonry walls on all sides, this would require placing the west wall 3' – 5' from the property line.")

Instead, to meet the "minimum reasonably necessary" element, Petitioner proposes building the new addition 5 feet from the property line to enable the addition to be in the best structural configuration short of building directly over the footprint of the new garage. That is, the 2-foot setback variance would allow the addition to bear on the solid part of the front face of the garage wall, given the structural challenges posed by the slope of the lot and the water flows, and the

carefully planned bearing walls of the garage that was designed (as allowed by the 2010 variance) to deal with the exceptional property conditions.

See Exhibit 3.

5. The Petitioner's Statement indicates that the subject property is one of the few houses on Lynn Drive that has not had a significant addition to expand the living space, and that it is one of two houses on Lynn Drive with an attached garage that do not have an addition on top of that garage. Thus the Statement concludes that granting the variance to allow this addition to proceed would "substantially conform with the traditional development pattern on Lynn Drive, and in the Town of Chevy Chase overall." See Exhibit 3.

6. The Petitioner's Statement indicates that she has talked with her abutting and confronting neighbors, and that none object to the variance. The abutting neighbor on the most affected side took "no position" on the variance application. See Exhibit 3.

7. At the hearing, Ms. Stukes walked the Board through her written submission and testified regarding the severity of the slope and water problems that affect her property. Ms. Stukes explained the lengths she has gone to in addressing the water issues caused by the slope of her lot and the impervious surface uphill from her property, but testified that the water problems continue. She testified that if the proposed addition were built over the garage door opening in accordance with the existing setbacks, her garage, which has been constructed to withstand the lateral force of the water, would be subject to load deflections.

Ms. Stukes testified that she was not seeking to build over the entire garage addition in order to keep her proposed addition the minimum needed. She testified that her neighbors to the right (as you look at her house) support the grant of the variance, and her neighbors to the left do not object.

8. Susan Matus of CASE Design testified that she had explored other options for expanding this house, but that there was no room to expand this house to the rear, and that the proposed addition over the garage was the correct choice.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, and that of her witnesses, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is substandard for the R-60 zone, and that it is encumbered by a steep upward slope which causes severe drainage problems. The Board adopts by reference the findings it made relevant to the topography and drainage problems of this property in Case No. A-6321. See Exhibit 3. The Board finds that the small size and steep slope of this lot constitute an unusual or extraordinary situation or condition specific to this property.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement submitted by the Petitioner, that most of the houses on Lynn Drive have had significant additions to expand their living space, and that the Petitioner's house is one of two houses on Lynn Drive with an attached garage that do not have an addition on top of that garage. Thus the Board finds that the proposed addition substantially conforms with the established historic or traditional development pattern of this street.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the existing house was built in 1939, and that Petitioner purchased the property in 2009. Thus the Board finds that the Petitioner took no action to create the unusual characteristics of this property or its severe topography.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioner and her Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed construction to proceed, as the rear yard is unavailable for construction due to its severe slope and water issues. The Board finds that the requested variance is minimal in that it allows the construction of a second story addition over an existing garage, and would extend a shorter distance into the side setback than the existing garage already encroaches. In addition, the Board notes that construction of the proposed addition at the setback distance that would be required without the grant of a variance would place the load of the addition over that portion of the new garage least able to withstand it. Thus the Board concludes that compliance with the required side setback would pose a practical difficulty for the Petitioners, and that the grant of this variance is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Bethesda Chevy Chase Master Plan, which seeks to "[p]rotect the high quality residential communities throughout the Planning Area" and to "[r]econfirm the zoning for the extensive single-family detached residential areas."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*


The Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties since it will be constructed over an existing garage, and since most of the homes on the street that have attached garages have additions over them. The Board further notes that per the Petitioner's Statement and testimony, she has spoken to her abutting and confronting neighbors, and none of them opposed the proposed construction that would be allowed if this variance were granted.

Accordingly, the requested two (2) foot variance from the side lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony and exhibits of record, and by the testimony of her witnesses; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, and Stanley B. Boyd in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of August, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.